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File No. O/Milk/52
69/52

Legal Department

G BRANCH

Subject:— Opinion on the Milk Orders.

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File No. O/Milk/52 69/52

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C O N T E N T S.

Legal Department File No. O.Milk/1952.

Sr.No.	R.I. / O.No.	Subject.	Pages.
		Opinions on the Milk Orders.	
1	O-312 10-7-52.	Question regarding the claim for the refund of the penalty for the short supply of milk from April 1948 to August 1948 made by the National Milk Producers' co-operative Society; Goregaon.	1-10.
2	O-315 11-7-52.	Question regarding payment of the electricity bill by the Anand Milk Products; Ltd. - Question whether Govt. will have to make this payment under the term of the agreement.	11-14.
3	O-320 15-7-52.	Question whether the 18 miles of roads inside the Aarey Milk Colony can be closed to public traffic by putting of 'No throughfare' notices.	15-18.
4	O-460 18-9-52.	Question regarding removal of encroachment on S.No.63 H.No.5 of Goregaon by M/s. Nanji & Co.	19-22.
5	599 7-11-52.	Licence for sale of hot milk held by one Ramlal Kandilal Sharma who died on 30-7-52 - Question regarding refund of deposit amount to the widow Gangabai.	23-26.
6	O-682 10-12-52.	Death of Smt.Alamai Doscabhay holder of an agency to run two milk centres near Bombay Central — Question regarding transfer of the Security deposit and the payment of the remuneration bills to Kumari Piroja, 4th sharer.	27-32.

SNT/17.7.

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Although the National Milk Producer's Co-operative Society Ltd., Goregaon, did say in their letter dated 30-4-1948 that they would not be liable to pay any penalty for short supply but would still make every effort to maintain the supply, they did not ledge any protest against the actual deductions made for the months of May to August 1948. It is true that the deductions were not made at the end of each month but were made for the first time in August 1948 in respect of the months of May and June 1948; in September 1948 in respect of the month of July 1948; and in October 1948 in respect of the month of August 1948. The conduct of the Society in submitting to these deductions without demur now disentitles them from claiming any relief. Two courses were open to the Society when deductions started being made: (1) they could have discontinued the supply; for, the new schedule apparently did not become operative till November 1948, or (2) they could have ledged an immediate protest particularly when they had taken care to give an intimation in writing that they would not be liable to any penalty. The Society followed neither course. Even assuming that by the time the deductions came to be made, the new schedule was deemed to be operative and having accepted that schedule the Society could not discontinue the supply, it was clearly the duty of the Society to protest immediately against the deductions made in August 1948. Instead the Society submitted to the deductions made even in the two succeeding months of September and October 1948. The first indication of protest was by way of a notice of suit sent in October 1950, i.e., two years later, during which interval the Society continued

to supply milk and also submitted to deductions thereafter making it clear that they had all along accepted the practice of deductions and were not keen on insisting upon their claim that they would not be liable to such deductions by way of penalty.
In these circumstances by their own conduct the Society must be deemed to have waived the claim they made that they would not be liable to pay any penalty.

Sd/- P.M.LAD.
10/7.

Remembrancer of Legal Affairs.

U.R. to M.C. No. C-312, dated 10th July 1952.

SMT/17.7.

Office of the R.L.A.

Clause 17(b) of the agreement provides that the processing charges shall be claimed and adjusted as per conditions laid down in clauses 15 and 16 and that provisional payment will be made every week by Government on the basis of the milk delivered and accepted in Bombay and the final adjustment will be made at the end of every quarter of a calendar year. It is further provided that the adjustments of the processing charges for a calendar year shall be made by both the parties before the 30th of June of the following year. From statement 'B' appended to the Milk Commissioner's letter to the Company it is evident that this adjustment is for the years 1948 to 1951. The adjustments were not made before the 30 th June following the years 1948 to 1949 perhaps because the agreement was entered into on 21st December 1950 and it was to be deemed to have come into force on the 4th August 1947. Condition 17(b) of adjusting the accounts before 30th June could not be followed in respect of the year 1948 and 1949 and has not been strictly followed even in respect of the year 1950. In view of this Government cannot now object to the Anand Milk Products Company admitting the bill of the Anand Electric Supply Company which was forwarded to Government by the former Company on the 8th December 1951 i.e. a month before the final adjustment was made on the 8th January 1952. The claim may, therefore, be admitted as it relates to the period during which the contract was operative and the amount paid to the Anand Milk Products Company on account of electricity should be revised after taking into consideration, this bill.

Sd/- P.M.LAD.
11/7.

Remembrancer of Legal Affairs.

U.R. to M.C., No. GG315. dated the 11th July 1952.

SMT/17.7.

Office of the R.L.A.

Presumably all these 18 roads were public roads before the property adjoining these roads on both the sides was acquired by Government for the Aarey Milk Colony. If so, the rights of the public over these roads will have to be extinguished by following the procedure laid down in section 37A of the Bombay Land Revenue Code, 1879. If some of the roads were private and were acquired under the Land Acquisition Act, then they are private roads and can be closed to the public by putting up a 'no throughfare'notice.

Sd/- P.M.IAD.
14/7.

Remembrancer of Legal Affairs.

U.R. to M.C., No. G-320, dated the 15th July 1952.

SMT/17.7.

Office of the R.L.A.

In the draft letter at page 55 ante, the Milk Commissioner has demanded rent on the whole area of 21 acres 30 gunthas of land from the date of taking over possession to the date of actual removal of the machinery from the site. It would not be correct to demand rent on all the 21 acres 30 gunthas as obviously no quarrying was done since the Milk Commissioner took over possession. Reasonable rent can be demanded only for the portion occupied by the articles and other things belonging to Shri Ramji and Company. Even though the Milk Commissioner in his letter dated the 11th August 1950 had threatened the Solicitors that rent would be charged for the whole area of 21 acres 36 gunthas if articles and huts are not removed within a fortnight of the receipt of the letter, still it would not be proper to charge any fine or penalty for non-removal in time. 'On compulsory acquisition of premises the lease thereof terminates and on such determination of the lease the tenancies come to an end with the result that the lessees remain on the premises merely as tenants on sufference' (I.L.R. 45 Bom. 725 Muns. Commr. for City of Bombay Vs. M. Damodar Bros.).

In this case no quarrying was done and they did not exercise the right of lessees except for keeping the thing on the land. The draft at page 55 as amended is in order.

Sd/- P.M.LAD.
18/9.

Remembrancer of Legal Affairs.

U.R. to M.C., No. GQ460, dated the 18th September 1952.

SNT/17.7

Office of the R.L.A.

As all the sons of Bai Gangabai are minors there appears no objection to refund the deposit amount to Bai Gangabai on taking an indemnity bond from her on behalf of herself and also as guardian of her minor sons. As the amount is not very big, it would not be advisable to insist on a succession certificate and the interest of Government will be safeguarded by taking an indemnity bond.

Sd/- P.M.LAD.
7/11.

Remembrancer of Legal Affairs.

U.R. to M.C., No. 599 , dated the 7th Nov. 1952.

SHT/17.7.

Office of the R.L.A.

There being five sharers in the property of the deceased, and of them three sharers having their consent to the transfer of the security deposit and the payment of the remuneration bills to the fourth sharer/ Kumari Piroja, there would be no legal objection to the transfer of the security deposit and the payment of the remuneration bills to Kumari Piroja on her executing an indemnity bond in respect of the share of the fifth ~~sharer~~ share whose whereabouts are not known. Letters of administration need not be insisted upon in this case.

Sd/- P.H.LAD.
10/12.

Remembrancer of Legal Affairs.

U.R. to M.C., No. G-682, dated the 10th December 1952.

SNT/17.7.